

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAJENDRA BADGAIYAN, M.D.,

Plaintiff,

v.

ANTHONY J. PRINCIPI, Secretary,
Department of Veterans' Affairs; President
and Fellows of HARVARD COLLEGE; and
Grace J. Mushrush, M.D.,

Defendants

Case No. 04-12031 PBS

**DEFENDANT PRESIDENT AND FELLOWS OF HARVARD COLLEGE'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES**

Defendant President and Fellows of Harvard College ("Harvard University") submits its Answer and Affirmative Defenses to the Complaint and Demand for Jury Trial (the Complaint") filed by Rajendra Badgaiyan, M.D. ("Plaintiff").

I. INTRODUCTION

1. Paragraph 1 of Plaintiff's Complaint has an introductory paragraph containing a summary of the action being brought and alleged with specificity in the following paragraphs and, therefore, requires neither an admission nor denial by Defendant. To the extent that these summary allegations suggest unlawful discrimination, retaliation, defamation, interference with advantageous relations, and infliction of emotional distress by Harvard University, they are denied.

II. JURSIDICTION

2. Paragraph 2 contains a statement of jurisdiction, not a factual averment, and therefore requires neither an admission nor denial by Harvard University. To the extent that an admission or denial is required, the allegations contained therein are denied.

III. PARTIES

3. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3, and, accordingly, they are denied.

4. The allegations in Paragraph 4 pertain to another defendant and no response is required. To the extent a response is required; the Harvard University denies the allegations in Paragraph 4 of the Complaint .

5. Harvard University admits that the “President and Fellows of Harvard College” is the correct legal name of the Defendant, that it is a charitable corporation established under the laws and Constitution of the Commonwealth of Massachusetts and that it is a degree-granting educational institution located in Cambridge, Massachusetts. The Defendant denies the remaining allegations in Paragraph 5 of the Complaint.

6. Harvard University admits that the defendant Grace Mushrush is a natural person. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6, and, accordingly, they are denied.

7. Harvard University admits that the Plaintiff is a student of medicine and psychology but it is without sufficient information or knowledge to form a belief as to the truth of the other allegations contained in Paragraph 7, and, accordingly, they are denied.

8. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 8, and, accordingly, they are denied.

9. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 9, and, accordingly, they are denied.
10. Harvard University admits that the Plaintiff was appointed to the Harvard Medical School faculty as an Assistant Professor in the Radiology Department and it is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 10, and, accordingly, they are denied.
11. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 and, accordingly, they are denied.
12. Harvard University admits that the Plaintiff has held the academic titles of Instructor and Clinical Fellow at Harvard Medical School and Research Associate at Harvard University, and it is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 12, and, accordingly, they are denied.
13. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 13, and, accordingly, they are denied.
14. Harvard University has learned that the Plaintiff enrolled in the United States Department of Veteran's Affairs South Shore Psychiatry Residency Training Program, which is operated by the Department of Veteran's Affairs and it otherwise denies the allegations contained in Paragraph 14 of the Complaint.
15. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 15, and, accordingly, they are denied.
16. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16, and, accordingly, they are denied.

17. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 17, and, accordingly, they are denied.
18. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 18, and, accordingly, they are denied.
19. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 19, and, accordingly, they are denied.
20. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 20, and, accordingly, they are denied.
21. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 21, and, accordingly, they are denied.
22. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 22, and, accordingly, they are denied.
23. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 23, and, accordingly, they are denied.
24. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 24, and, accordingly, they are denied.
25. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 25, and, accordingly, they are denied.
26. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 26, and, accordingly, they are denied.
27. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 27, and, accordingly, they are denied.
28. Harvard University is without sufficient information or knowledge to form a belief as to

- the truth of the allegations contained in Paragraph 28, and, accordingly, they are denied.
29. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 29, and, accordingly, they are denied.
30. Harvard University denies the allegations in Paragraph 30 of the Complaint.
31. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 31, and, accordingly, they are denied.
32. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 32, and, accordingly, they are denied.
33. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 33, and, accordingly, they are denied.
34. Harvard University denies that it has specific rules governing disciplinary action against medical residents, and Harvard is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 34, and, accordingly, they are denied.
35. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 35, and, accordingly, they are denied.
36. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 36, and, accordingly, they are denied.
37. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 37, and, accordingly, they are denied.
38. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 38, and, accordingly, they are denied.
39. Harvard University is without sufficient information or knowledge to form a belief as to

the truth of the allegations contained in Paragraph 39, and, accordingly, they are denied.

40. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 40, and, accordingly, they are denied.

41. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 41, and, accordingly, they are denied.

42. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 42, and, accordingly, they are denied.

V. CAUSES OF ACTION

COUNT I. DISCRIMINATION ON ACCOUNT OF RACE AND NATIONAL ORIGIN

43. Harvard University reasserts its responses in Paragraphs 1 through 42 as if fully set forth herein.

44. Paragraph 44 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required.

45. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 45, and, accordingly, they are denied.

46. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 46, and, accordingly, they are denied.

47. Harvard University denies the allegations in Paragraph 47 of the Complaint.

48. The allegations in Paragraph 48 are too vague for Harvard University to answer after making reasonable inquiry, and accordingly it is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 48, and, accordingly, they are denied.

49. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 49, and, accordingly, they are denied.

COUNT II. HOSTILE ENVIRONMENT RACIAL HARASSMENT

50. Harvard University reasserts its responses in Paragraphs 1 through 49 as if fully set forth herein.

51. Paragraph 51 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required and to the extent a response is required, Harvard denies the allegations in Paragraph 51 of the Complaint.

52. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 52, and, accordingly, they are denied.

53. Harvard University denies the allegations contained in Paragraph 53.

54. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 54, and, accordingly, they are denied.

55. Harvard University denies the allegations in Paragraph 55 of the Complaint.

56. Harvard University denies the allegations in Paragraph 56 of the Complaint.

57. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 57, and, accordingly, they are denied.

COUNT III. RETALIATION

58. Harvard University reasserts its responses in Paragraphs 1 through 57 as if fully set forth herein.

59. Paragraph 59 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required, and to the extent an answer is required, Harvard denies the

allegations in Paragraph 59 of the Complaint.

60. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 60, and, accordingly, they are denied.
61. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 61, and, accordingly, they are denied.
62. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 62, and, accordingly, they are denied.
63. The allegations in Paragraph 63 are too vague for Harvard University to answer, therefore, it is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 63, and, accordingly, they are denied.
64. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 64, and, accordingly, they are denied.
65. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 65, and, accordingly, they are denied.
66. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 66, and, accordingly, they are denied.

COUNT IV. BREACH OF CONTRACT BY DEFENDANTS

67. Harvard University reasserts its responses in Paragraphs 1 through 67 as if fully set forth herein.
68. Harvard University admits that it has in place policies with respect to faculty appointees concerning academic integrity, and conflicts of interest, and it otherwise denies the allegations contained in Paragraph 68 of the Complaint.
69. Harvard University is without sufficient information or knowledge to form a belief as to

the truth of the allegations contained in Paragraph 69, nor is it aware of the document referred to therein, and, accordingly, the allegations are denied.

70. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 70, and, accordingly, they are denied.

71. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 71, and, accordingly, they are denied.

72. Harvard University denies the allegations in Paragraph 72 of the Complaint.

73. Harvard University denies the allegations in Paragraph 73 of the Complaint.

74. Harvard University denies the allegations in Paragraph 74 of the Complaint.

COUNT V: INTERFERENCE WITH ADVANTAGEOUS RELATIONS

75. Harvard University reasserts its responses in Paragraphs 1 through 74 as if fully set forth herein.

76. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 76, and, accordingly, they are denied.

77. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 77, and, accordingly, they are denied.

78. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 78, and, accordingly, they are denied.

79. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 79, and, accordingly, they are denied.

80. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 80, and, accordingly, they are denied.

81. Harvard University is without sufficient information or knowledge to form a belief as to

the truth of the allegations contained in Paragraph 81, and, accordingly, they are denied.

COUNT VI : DEFAMATION

82. Harvard University reasserts its responses in Paragraphs 1 through 82 as if fully set forth herein.
83. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 83, and, accordingly, they are denied.
84. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 84, and, accordingly, they are denied.
85. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 85, and, accordingly, they are denied.
86. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 86, and, accordingly, they are denied.
87. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 87, and, accordingly, they are denied.

COUNT VII. INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

88. Harvard University reasserts its responses in Paragraphs 1 through 87 as if fully set forth herein.
89. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 89, and, accordingly, they are denied.
90. Harvard University is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 90, and, accordingly, they are denied.
91. Harvard University is without sufficient information or knowledge to form a belief as to

the truth of the allegations contained in Paragraph 91, and, accordingly, they are denied.

92. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 92, and, accordingly, they are denied.

93. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 93, and, accordingly, they are denied.

94. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 94, and, accordingly, they are denied.

95. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 95, and, accordingly, they are denied.

96. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 96, and, accordingly, they are denied.

97. Harvard University is without sufficient information or knowledge to form a belief as to
the truth of the allegations contained in Paragraph 97, and, accordingly, they are denied.

VI. RELIEF

1. Harvard University denies that the Plaintiff is entitled to the relief sought in Paragraphs 1 through 6, inclusive of subparagraphs, in the Plaintiff's prayer for relief.
2. Harvard University denies any and all of the allegations of the Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred to the extent that he fails to set forth a prima facie case of discrimination.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by his failure to exhaust his administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred, in whole or in part, by his failure to mitigate his alleged damages.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff's claims must be limited in accordance with the provisions of Mass. Gen. Laws. Ch. 231, sec. 85K.

SIXTH AFFIRMATIVE DEFENSE

At all relevant times, Harvard University's actions were legal, proper, reasonable, and in conformity with all applicable regulations and laws.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims must be dismissed because the Plaintiff has not suffered any compensable injury as a result of any action or omission by Harvard University.

EIGHTH AFFIRMATIVE DEFENSE

The injuries alleged were caused by the intervening and/or superseding acts of a third

person for whom the Defendant, Harvard University is not liable.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, and are pre-empted by, the Worker's Compensation Act, M.G.L. c. 152.

TENTH AFFIRMATIVE DEFENSE

Harvard University denies that it employed the Plaintiff's alleged supervisor, Grace Mushrush.

ELEVENTH AFFIRMATIVE DEFENSE

Harvard University's actions, if any, were privileged.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred in part or whole by the applicable statutes of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

There was no consideration for a contract.

FOURTEENTH AFFIRMATIVE DEFENSE

Any injury the Plaintiff suffered was caused by a fellow servant.

FIFTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claim for breach of contract is barred by the doctrine of laches.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claim for breach of contract is barred by the statute of frauds.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has waived the right to enforce any alleged contract he claims existed with Harvard University

EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claim for breach of contract are barred because the terms of the contract, as alleged, are too uncertain and uncertain to be given any effect.

NINETEENTH AFFIRMATIVE DEFENSE

The Defendant did not suffer damages, or suffered only nominal damages as a result of the alleged breach of contract.

TWENTIETH AFFIRMATIVE DEFENSE

Harvard University did not possess the requisite intent to defame or otherwise inflict emotional distress on the Plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The allegedly defamatory statements were not published or communicated.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The allegedly defamatory statements were not false.

TWENTY-THIRD AFFIRMATIVE DEFENSE

No person was acting within the scope of their agency of Harvard, if any, in making any allegedly defamatory statements.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Harvard University did not possess the requisite intent to interfere with the Plaintiff's economic relations.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Harvard University's actions, if any, were justified.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Harvard University reserves the right to amend this Answer to add such affirmative defenses as warranted by additional investigation and discovery in this case.

DEFENDANT'S DEMAND

Harvard University requests that this Court:

1. Dismiss Plaintiff's Complaint in its entirety;
2. Award the Defendant costs, and reasonable attorneys' fees;
3. Award such other further relief that this Court deems just and proper.

Harvard University Demands a trial by Jury on all issues so triable.

Respectfully submitted,
Defendant, President and Fellows of
Harvard College,
By its attorneys,

/s/ Daniel S. Field

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Date: April 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel for the plaintiff, Paul H. Merry, Esq., Law Office of Paul H. Merry, Esq. 44 School Street, 10th Floor, Boston, MA 02108, by first-class U.S. mail this 14th day of April, 2005.

/s/ Daniel S. Field

Daniel S. Field